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Supreme Court, U.S.
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No. 96-1394

IN THE

Supreme Court of the United States

October Term, 1996

ESTEBAN ORTIZ, *et al.*,

Petitioners,

vs.

FIBREBOARD CORPORATION, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENT CLASS REPRESENTATIVES GERALD AHEARN, *ET AL.*

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Pursuant to Rule 15.8 of the Supreme Court Rules, respondent class representatives *Gerald Ahearn, et al.* submit this supplemental brief to bring to the Court's attention the applicability of its recent decision in *Chandler v. Miller,* No. 96-126, to an argument made in the reply brief of petitioners *Esteban Ortiz, et al.*

At page 9 of their reply brief the Ortiz petitioners assert that respondents cannot ask the Court to deem their complaint amended to plead the insurance coverage disputes that were settled here because Rule 15(b) does not permit deemed amendments of complaints to cure a failure of jurisdiction. In *Chandler v. Miller,* at note 2, this Court specifically held, in reliance on 28 U.S.C. § 1653, that a representation of counsel at oral argument was sufficient to cure a suggestion of mootness which would otherwise have deprived the Court of jurisdiction to consider the appeal. The same principle is applicable here.

Respectfully submitted,

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